

ESTTA Tracking number: **ESTTA540620**

Filing date: **05/29/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Hotel Park City Residential Condominium Project Association, Inc.		
Entity	Corporation	Citizenship	Utah
Address	2001 Park Avenue Park City, UT 84060 UNITED STATES		

Attorney information	Ruth Rivard Leonard, Street and Deinard 150 South Fifth Street, Suite 2300 Minneapolis, MN 55402 UNITED STATES ruth.rivard@leonard.com, suzanne.mullen@leonard.com Phone:612.335.1799		
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Registration Subject to Cancellation

Registration No	4284182	Registration date	01/29/2013
Registrant	Park City Hotel Associates, LLC 2001 Park Avenue Park City Hotel Associates Park City, UT 840605157 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 2002/12/13 First Use In Commerce: 2007/12/13 All goods and services in the class are cancelled, namely: Making hotel reservations for others; Resort hotel services

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	lack of ownership

Related Proceedings	Petitioner is also filing a Notice of Opposition for HOTEL PARK CITY (stylized), Serial No. 85601162
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85749739	Application Date	10/09/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HOTEL PARK CITY		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2003/01/15 First Use In Commerce: 2003/01/15 Resort hotel services

U.S. Application No.	85749760	Application Date	10/09/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HOTEL PARK CITY		
Design Mark			
Description of Mark	The mark consists of two overlapping aspen leaves with joined stems beneath the phrase "HOTEL PARK CITY" in an arc arrangement and with small capitals font.		
Goods/Services	Class 043. First use: First Use: 2003/01/15 First Use In Commerce: 2003/01/15 Resort hotel services		

Attachments	HPC Cancellation.pdf(73905 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ruth Rivard/
Name	Ruth Rivard
Date	05/29/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration
No.: 4,284,182
Mark: **HOTEL PARK CITY**
Date of Issue: January 29, 2013

Cancellation No. _____

Hotel Park City Residential Condominium
Project Association, Inc.,

Petitioner,

v.

Park City Hotel Associates, LLC,

Registrant.

PETITION FOR CANCELLATION

Applications submitted by Petitioner Hotel Park City Residential Condominium Project Association, Inc., a Utah non-profit corporation ("RHOA") to register the marks HOTEL PARK CITY and HOTEL PARK CITY (stylized) in international class 43 in connection with resort hotel services, Serial Nos. 85749739 and 85749760, respectively, have been refused by the United States Patent and Trademark Office ("USPTO") based on U.S. Registration 4,284,182 for HOTEL PARK CITY for use in connection with making hotel reservations for others and resort hotel services, owned by Park City Hotel Associates, LLC, a Utah limited liability company ("PCHA"). RHOA believes that as between RHOA and PCHA, RHOA has priority in the mark HOTEL PARK CITY.

Furthermore, RHOA believes, as between RHOA and PCHA, RHOA is the proper owner of the mark HOTEL PARK CITY. Thus, RHOA has been and will continue to be injured by the existence of this registration as it prevents RHOA from obtaining a federal trademark registration for the marks HOTEL PARK CITY and HOTEL PARK CITY (stylized) (together, “the Hotel Marks”).

As grounds for its petition, RHOA alleges:

1. Petitioner RHOA represents the residential owners of the Hotel Park City Condominium Project (“Hotel”). The Hotel is what is commonly referred to as a “condo hotel.” A condo hotel is a resort hotel, typically in a prime vacation area, in which each sub-unit is individually owned.

2. The residential owners or their predecessor in interest have been using the Hotel Marks to promote the Hotel and its services since at least its inception, in late 2002 or early 2003.

3. PCHA was not the original rental manager for the Hotel.

4. PCHA is currently retained by many of the owners, although not all, to provide hotel services to the residential owners and their guests. On information and belief, PCHA currently offers this service to the residential owners under the name PCHA.

5. PCHA is engaged as an agent of the residential owner to provide hotel services for that particular residential owner on a yearly basis.

6. The interests of the residential owners are represented by an elected board of owners (the “RHOA Management Committee”). RHOA was registered as a non-profit corporation with the State of Utah on January 15, 2003.

7. One of the purposes of the RHOA Management Committee is to maintain the reputation and quality of the Hotel.

8. The goodwill that is associated with the Hotel inures to the benefit of the residential owners, who are represented by the RHOA.

9. On April 13, 2012, unbeknownst to the RHOA Management Committee, PCHA filed applications to register the Hotel Marks, improperly claiming ownership of those marks.

10. After becoming aware of the pending applications, the RHOA Management Committee asked PCHA to withdraw the applications, but PCHA refused.

11. On October 9, 2012, the RHOA Management Committee, acting on behalf of the owners, and as the proper owner of the Hotel Marks, applied to register the marks for resort hotel services.

12. On January 29, 2013, the PCHA application for the work mark HOTEL PARK CITY registered on the Supplemental Register and the PCHA application to register the HOTEL PARK CITY stylized mark was published in the Gazette.

13. On February 6, 2013, RHOA received an office action from the USPTO in which the USPTO refused to register the applied for marks based on a likelihood of confusion with U.S. Registration No. 4,047,901.

COUNT I
(Cancellation of Registration No. 4,284,182 Based on Priority)

14. RHOA realleges paragraphs 1 through 13.

15. On April 13, 2012, PCHA submitted an application to register the mark HOTEL PARK CITY on the Supplemental Register for use in connection with making hotel reservations for others and resort hotel services. Registrant claims in its trademark application to have first used the mark HOTEL PARK CITY on December 13, 2007.

16. RHOA began using the Hotel Marks at least as early as January 15, 2003.

17. RHOA, has priority in the marks HOTEL PARK CITY and HOTEL PARK CITY (stylized).

18. In the February 6, 2013 Office Action, the Examining Attorney concluded that there is a likelihood of confusion between RHOA's mark and the PCHA registration.

19. If PCHA's use of the mark were not under the control of the residential owners and RHOA, then PCHA's use of the Hotel Mark is likely to cause confusion.

20. RHOA has been prevented from registering the Hotel Marks based on the continued presence of PCHA's registration. Thus, if the registration is not cancelled, RHOA will continue to be damaged as a result of the continued registration by PCHA.

COUNT II
(Cancellation of Registration No. 4,047,901 Based on Incorrect Ownership)

21. Petitioner realleges paragraphs 1 through 19.
22. The RHOA Management Committee controls the quality and reputation of the Residential Unit, which includes all of the residential sub-units available for use as vacation rentals.
23. The RHOA Management Committee, through its majority vote, controls the quality and reputation of the Hotel.
24. PCHA provides hotel management services at the request and on the behalf of the residential owners.
25. As between the RHOA and PCHA, the RHOA first began using the mark to provide resort hotel services.
26. The RHOA Management Committee maintains control of the quality of the Hotel.
27. The RHOA is the rightful owner of the Hotel Marks.
28. PCHA has improperly claimed ownership of HOTEL PARK CITY through its registration of HOTEL PARK CITY and thus, Registration No. 4,284,182 should be cancelled.

WHEREFORE, RHOA requests that Registration No. 4,284,182 for the mark HOTEL PARK CITY be cancelled and removed from the Supplemental Register.

Respectfully submitted:

Dated: May 29, 2013

By: /Ruth Rivard/_____

Ruth Rivard

**LEONARD, STREET AND DEINARD
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ATTORNEY FOR PETITIONER HOTEL PARK CITY
RESIDENTIAL CONDOMINIUM PROJECT ASSOCIATION,
INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 29, 2013, true and correct copies of the foregoing PETITION FOR CANCELLATION were served on Registrant by depositing copies of same in the United States mail, first class postage pre-paid, addressed to:

Barnard N. Madsen
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/Ruth Rivard/
Ruth Rivard